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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/930,917	08/16/2001	John E. Gunderman	20386/305	2246

7590 10/21/2003

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EXAMINER

GELLNER, JEFFREY L

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 10/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/930,917

Applicant(s)

GUNDERMAN ET AL.

Examiner

Jeffrey L. Gellner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 July 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5, 7-10, 12, 14-16, 23 and 25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-5, 7-10, 12, 14-16 and 25 is/are allowed.
- 6) ☒ Claim(s) 23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 23 is rejected under 35 U.S.C. 102(b) as being anticipated by Piglia (US 2,141,484).

As to Claim 23, Piglia discloses a support member (13 of Fig. 3) for a plant support apparatus (Fig. 3) comprising at least one leg (region around leadline of 11 in Fig. 3) attachable to an upper ring and lower ring (17 of Fig. 3; col. 2 lines 2-5), the leg adapted to support the rings (Fig. 3) and engage the ground (region around 15 of Fig. 3); the at least one leg comprising a ledge (15 of Fig. 3) shaped so as to permit application of a downward force by a plant support user (inherent in Fig. 3) to insert a portion of the plant support into the ground; wherein the ledge is defined by a bend in the at least leg (shown between 16 and 15 of Fig. 3), the ledge located below the position where the lower ring attaches to the at least one leg (Fig. 3); where in the at least one leg is an elongate U-shaped member (13 of Fig. 3; “V-shaped member” of col. 1 line 50; Examiner considers Piglia’s V-shaped member to be U-shaped) comprising a closed end (region around 14 of Fig. 3) and an open end (region around 15 of Fig. 3) defined by two portions of the U-shaped member (Fig. 3); a portion of the upper ring adapted to be attached proximate the closed end of the at least one leg (Fig. 3) such that a loop (region around 14 of Fig. 3) is formed above the upper ring by the closed end of the leg (region around 14 of Fig. 3); and,

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wherein the loop is positioned in a different plane as the two portions of the U-shaped member at the open end (defining the planes as horizontal at 15 and 14 of Fig. 3).

***Allowable Subject Matter***

Claims 1-5, 7-10, 12, 14-16, and 25 are allowed over the art of record.

***Response to Arguments***

As regard to Claim 23, Applicant's arguments filed 28 July 2003 have been fully considered but they are not persuasive. Applicant's arguments are (1) Piglia does not disclose a plant support but does disclose a plant cover (Remarks page 8 4<sup>th</sup> para.); Piglia does not disclose a ledge which would permit application of a downward force by a plant support user to insert a portion of the plant support into the ground (Remarks page 8, last para. and page 9, 1<sup>st</sup> para.); and, (3) the purpose of Piglia is not to support a plant container (Remarks page 9 1<sup>st</sup> complete para.).

As to argument (1), Examiner considers the device of Piglia to be capable of being a plant support apparatus regardless of the inventors intended and disclosed use for the device.

As to argument (2), Examiner considers element (15) of Piglia to be a ledge and it is capable with the proper soil ( say sandy soil) to be forced into the ground by a user when stepping on the ledge.

As to argument (3), Examiner considers the device of Piglia to disclose the language recited in Applicant's Claim 23 regardless of Piglia's suggested use.

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***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jeffrey L. Gellner whose phone number is 703.305.0053. The Examiner can normally be reached Monday through Thursday from 8:30 am to 4:00 pm. The Examiner can also be reached on alternate Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Peter Poon, can be reached at 703.308.2574. The official fax telephone number for the Technology Center where this application or proceeding is assigned is 703.872.9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.1113.



Jeffrey L. Gellner



PETER M. POON  
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TECHNOLOGY CENTER 3643